IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1645 (S/B) of 2002

Mohan Chandra Pandey S/o Late Sri Kamla Kant Pandey,
R/o Haripur Tularam Haldwani, District Nainital

... Petitioner

Versus

1. State of Uttaranchal through Secretary Department of Rural Development, Uttaranchal Shasan, Dehradun
2. Commissioner, Rural Development, Uttaranchal, Dehradun
3. Chief Development Officer, Nainital
4. Sri Virendra Singh Bisht, Joint Block Development Officer, C/o Commissioner Rural Development Uttaranchal, Dehradun
5. Nideshak Arth Evam Sankhya Prabhag, Uttaranchal, Dehradun.

...Respondents

Sri Manoj Tewari, learned counsel for the petitioner.
Learned standing counsel for the State.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal,J.

Dated: March 24, 2006

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned dated 25.10.2002 (Annexure- 12) passed by Respondent No. 2 and the consequential order dated 11.11.2002 (Annexure- 13) issued by Respondent No.3.

The petitioner was appointed by Commissioner Rural Development as Assistant Development Officer (Industry, Service and Business) ***(hereinafter will be referred as A.D.O.I.S.B.)*** under the Rules proviso to Article 309 of Constitution of India known as U.P. Assistant Development Officer (Industry, Service and Business) Non-Gazetted Service Regulation, 1991. From

the post of A.D.O. I.S.B., the petitioner vide order dated 24.05.2002 was promoted on the post of Joint Block Development Officer in accordance with the rules known as U.P. Joint Block Development Officer (non-gazetted) Service Rules, 1992. Pursuant to the promotion order, the petitioner joined on the post of Joint B.D.O. in Block Ramgarh on 01.06.2002 and he was also given additional charge of Block Development Officer, Ramgarh as the said post was lying vacant. Thereafter, vide order dated 25.10.2002 issued by the Commissioner Rural Development, Uttaranchal, the petitioner's promotion has been cancelled on the ground that he was confirmed on the post of A.D.O. (Statistics) w.e.f. 11.08.1999.

In the counter affidavit, it has been stated that since the petitioner was not A.D.O. (ISB), therefore, he was not in the feeding cadre for promotion. The order dated 24.05.2002 passed by Sri R.S. Tolia, the then Commissioner, Rural Development is on record by which the petitioner was promoted on the post of A.D.O. I.S.B. and after giving him a notional promotion, he was promoted as Joint B.D.O, Undisputedly, the notional promotion has not been cancelled. Therefore, the petitioner's promotion from the post of A.D.O. I.S.B. to the post of Joint B.D.O. could not have been cancelled.

The petitioner has worked as Joint B.D.O. The further grievance of the petitioner is that other similarly situated persons who were promoted alongwith the petitioner notionally as A.D.O. I.S.B. then on the post of Joint B.D.O. have been promoted on the post of B.D.O., however the petitioner's promotion has been cancelled although they are much juniors to the petitioner, hence this fact is undisputed.

The petitioner was promoted on the post of A.D.O. I.S.B. from the post of Village Development Officer which is a post under the Rural Development

Department. The reason for giving the notional promotion was that from the post of Village Development Officer, the petitioner's service was taken in various other posts of A.D.Os. on ad-hoc basis by way of local arrangement under the Block Development Officer by the District Magistrate concerned. The Village Development Officer is the feeding cadre for the post of A.D.O. I.S.B. and A.D.O. Development.

In the counter affidavit, it has further been stated that the petitioner was working in Economics & Statistics Department as temporary Assistant Development Officer and according to the service record and work of the petitioner he was regularized and confirmed as Assistant Development Officer (Statistics) in the Economic & Statistics Department w.e.f. 1.08.1999 vide order dated 30.06.2002 issued by the Deputy Director Economics & Statistics, Lucknow.

The reply submitted to this paragraph by the petitioner is not satisfactory. The post of A.D.O. (Statistics) is equal to the post of A.D.O. Arth Evam Sankhya Nirikshak. When the employee is posted in the office, he is called as Economics & Statistics Inspector and when he is posted in the Block, he is called A.D.O. (Statistics). The Rule (5) of Rule, 1982 known as U.P. Subordinate Economics and Statistics Department Services Rules provides for source of recruitment to the post of Economic and Statistics Inspector/A.D.O. (Statistics). In the said Rule, two sources are provided for recruitment, one by Direct Recruitment through Public Service Commission and another by promotion in consultation with the Public Service Commission from the post of *Gram Sewak* designated as Village Development Officer who has put in at least three years of service and is an intermediate. The ratio of direct recruitment and promotion is 80:20 respectively. The

Appointing Authority under the said Rule is additional Director (Administration) Economics and Statistics Department.

A perusal of the Annexure-9 shows that the petitioner has been confirmed treating him to be a regularly appointed A.D.O. (Statistics) treating his previous services to be on probation. There is nothing on record to show that the petitioner was appointed as regular Economic and Statistics Inspector as the said appointment is to be made by the Public Service Commission. There is no mention about the consultation of the Public Service Commission for regularization of services of the petitioner. Therefore, the petitioner was not a regularly appointed Economics and Statistics Inspector as required by Rule 5 of the Rules known as U.P. Subordinate Economics and Statistics Department Services Rules, 1982.

Therefore, it is held that the petitioner was serving in the Statistics Department on ad-hoc basis and he was rightly given the notional promotion as A.D.O. I.S.B. by the Rural Development Commissioner from the post of Village Development Officer of the Rural Development Department.

Accordingly, the writ petition is allowed. The orders dated 25.10.2002 passed by Respondent No.2 and the consequential order dated 11.11.2002 issued by Respondent No.3 are hereby quashed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang